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10/713,050	11/17/2003	Christian Kunert	SGW-97 C2	1157

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EXAMINER

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ART UNIT	PAPER NUMBER
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1755

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/713,050
Filing Date: November 17, 2003
Appellant(s): KUNERT ET AL.

Anthony Zelano
For Appellant

EXAMINER'S ANSWER

MAILED
OCT 19 2005
GROUP 1700

This is in response to the appeal brief filed 8-29-05 appealing from the Office action
mailed 11-24-04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

The decision mailed September 16, 2003 in prior application 09/532966.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

The granting of the application priority claim is not appealable and therefor will not be addressed. A decision on the priority was made in the Petition Decision of 8-19-05 and the priority was denied.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

5,288,668	Netter	2-1994
2348197	GB	9-2000
2000-290037	Japan	10-2000

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5,8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Netter (5,288,668).

Claims 5 and 9 set forth a glass composition comprising SiO_2 , B_2O_3 , Al_2O_3 , Na_2O and a decolorant. In the instant disclosure a decolorant is a constituent that counteracts or hides the coloring effect of iron. Examples 3 and 4 of Netter fall squarely within the claimed ranges of SiO_2 , B_2O_3 , Al_2O_3 , Na_2O with the further addition of MnO_2 which is considered to be a decolorant because it counteracts or hides the coloring effect of iron.

Claim 8 sets forth a glass consisting essentially of SiO_2 , B_2O_3 , Al_2O_3 , Na_2O and a fining agent. Netter further includes Cl which is a fining agent. The "consisting essentially of" terminology is not considered to exclude the MnO_2 of Netter because the specification allows for the addition of any component that counteracts or hides the

Art Unit: 1755

coloring effect of iron and therefor MnO_2 is not considered to materially affect the basic characteristics of the invention.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2348197 and Japanese document 2000-290037.

The examples of the documents fall squarely within the ranges of SiO_2 , B_2O_3 , Al_2O_3 , Na_2O set forth in the claims.

(10) Response to Argument

Firstly it is pointed out that claims 5, 8 and 9 do not claim a "colorless" glass.

Appellants' argument that the declaration filed 10-22-04 establishes that MnO_2 used in the glass compositions of Netter is not a decolorant as required in the rejected claims 5 and 9, but is a colorant, is not persuasive in overcoming the rejection.

Applicants own disclosure defines a decolorant as "It is also possible for decolorants, such as, for example, Er_2O_3 or CoO , to be included, which counteract or hide the coloring effect of iron which is usually present in the raw material.". The MnO_2 of Netter forms a pink color which hides the coloring effect of the iron which is present in the raw materials. MnO_2 is considered to be a decolorant as the term decolorant is defined in the instant disclosure. The declaration filed 10-22-04 is attempting to redefine the terminology of the disclosure after the filing date of the application.

In appellants' arguments addressing the priority, the beaker filed as an artifact, submitted with the declaration of 10-22-04, it is stated "edge coloring is not relevant to the term "colorless" but rather, only "a view through the panel" is relevant". Therefor in applicants own arguments a glass may have some coloration and still be considered

Art Unit: 1755

"colorless" further clouding what is considered to be colorless as defined by the instant invention. The instant disclosure fails to use the term "colorless" (the term is only present in the claims) let alone quantitatively define the term. One of ordinary skill in the art typically uses quantitative measurements such as percent light transmission, color charts, to define the optical properties of glass.

Applicants argue in claim 8, the terminology "consisting essentially of" excludes materials that would materially affect the basic characteristics of the claims. It is noted claim 8 does not claim a colorless glass. The MnO_2 of Netter is not considered to be excluded from the glass. The instant disclosure allows for the addition of a decolorant. Decolorant is defined as materials that counteract or hide the coloring effect of iron which is usually present in the raw material. MnO_2 in Netter counteracts or hides the coloring effect of iron and is therefor considered a decolorant as defined in the instant disclosure.

Appellants argue in reference to the rejection of claims 1-20 as being anticipated by GB 2348197 and Japanese document 2000-290037 that the instant claims have an effective filing date of the parent application, March 22, 2000. This is not persuasive in overcoming the rejection because the priority to application 09/532966 was denied in the Decision on the Petition filed 8-19-05. The effective filing date of the instant application is November 17, 2003.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 1755

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Karl Group



Conferees:



Jerry M. Lorengo

Patrick Ryan

